

Application Serial No. 10/820,555
Reply to Office Action of February 8, 2008

PATENT
Docket: CU-4420

REMARKS

This amendment is submitted with a Request for Continued Examination under 37 C.F.R. §1.114. The Commissioner is authorized to charge the RCE fee and any other fee that might be needed to have this amendment entered and considered.

In the office action, claims 1-8 and 10 were rejected under 35 U.S.C. §112, ¶2. The Examiner seems to have rejected the claims because the phrase, "an actual track event" in the preamble of claim 1 might have been confusing when the same phrase was repeated in the first affirmatively-recited limitation.

Claim 1 has been amended in response to the "112" rejection. Other independent claims have also been amended such that when "an actual track route" is recited in the preamble, subsequent usage of the term now includes the terms, "the" or "said" so as to properly refer to the actual track route recited in the claim's preamble. Other superficial amendments have been made to correct typographical and grammatical errors.

Claims 1-8 and 10-28 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. patent 7,188,057 to Birkleback.

On Friday, May 2, 2008, the applicant's agent, Ms. Goska Colle and the applicant's undersigned attorney conducted a telephone interview of the Examiner during which the parties discussed the 102 claim rejections at length. Ms. Colle and the applicant's attorney appreciate the time that the Examiner gave them to discuss the application. Paraphrased, the applicant and its

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representative maintained their contention that Birkleback is directed to a method and apparatus by which a proposed, i.e., non-existent rail line can be simulated on a computer. Birkleback repeatedly states that the invention disclosed therein pertains to the simulation of a proposed rail system.

Unlike Birkleback, the applicant's invention simulates an actual existing track route. The applicant's invention also simulates actual track events along an actual and existing track route and simulates the actual terrain surrounding an actual and existing track route. The applicant's invention thus provides a true simulation of real, existing track so that a train locomotive engineer can be trained on a simulator that actually simulates what the engineer will actually experience in the real world.

A word-by-word inspection of Birkleback by the applicant established that Birkleback does not show or suggest how to simulate an actual and existing track route on a computer. Since the claims of this application clearly require the simulation of an actual track route, the rejection under §102 was improper.

During the aforementioned telephone conference, the Examiner suggested that the applicant consider amending the claims to recite that the claims are directed to the simulation of an actual and existing track route. By this amendment, the applicant has amended the claims to recite that the simulation provided by this invention is of an actual and existing track route to further distinguish the pending claims from Birkleback.

The applicant contends that no new matter has been added by

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amending the claims to recite "existing" track routes because the "existing" limitation is inherently disclosed by the repeated use of "actual track routes" through-out the application. (Emphasis added.)

The word, "actual" is unambiguous. It has only two definitions given to it by the Merriam-Webster's Collegiate Dictionary both of which are similar to each other. According to Merriam-Webster's dictionary, the word "actual" means, "existing in act and not merely potentially" or, "existing in fact or reality having starting and ending points." (Emphasis added.) The ordinary meaning of "actual" is thus, "existing in act" or "existing in fact." No new matter has been added.

The applicant contends that the claim rejections were improper under well-established and controlling case law. Despite the impropriety of those rejections, the amendments to the independent claims traverse all the rejections and place the claims in condition for allowance. Their reconsideration is respectfully requested.

Respectfully submitted,

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